

Regeneration and Property Committee	
Meeting Date	8 th March 2023
Report Title	Land at Great East Hall
EMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Joanne Johnson, Head of Regeneration, Economic Development and Property
Lead Officer	Kieren Mansfield, Economic Development and External Funding Manager / David Johnson, Interim Property Advisor
Classification	EXEMPT
Recommendations	<ol style="list-style-type: none"> 1. To agree in principle for officers to proceed with negotiations for the transfer of the site to Swale Borough Council, with any transfer subject to terms that can be agreed, an application to vary the relevant section 106 agreement and final Committee approval. 2. Subject to the transfer proceeding, to agree in principle to identify and reserve an appropriately sized and located parcel of land within the site, to enable the delivery of a community shop. Any transaction would be subject to the receipt and independent review of a funded delivery plan for its construction, business plan demonstrating financial sustainability and the formation of an appropriate legal entity through which the project can be progressed. 3. That if the conditions to enter into a transaction to enable the delivery of a community shop are not met by September 2024, a further committee report considers the continued reservation of the land identified for its construction.

1 Purpose of Report and Executive Summary

- 1.1 This report sets out the background to discussions between Swale Borough Council and Countryside Properties regarding land at Great East Hall, in Sittingbourne and recommends that the Council considers the principle of negotiating the transfer of the land in question, with a commuted sum.
- 1.2 This transfer and commuted sum would be in lieu of existing planning obligations and would be subject to an application by Countryside Properties to amend an

existing section 106 agreement. Should this proceed, the future use of the majority of the site is not yet defined, but with a small proportion of the land intended to support the development of a community shop. As there is some uncertainty regarding the future delivery and operation of the shop, the report also recommends that this would be subject to meeting set criteria.

- 1.3 This report is an 'in principle' report for land that is currently assumed to have a value in excess of £30,000, as required by the Council's Acquisitions Policy. Any agreement reached would be *subject to contract, Committee approval and, where appropriate, survey*. A report will be prepared for a future Committee by the Head of Regeneration, Economic Development and Property and the Chief Financial Officer with a recommendation as to whether to accept the transfer of the land.

2 Background

- 2.1 The land to which this report relates is identified at appendix 1. The site extends to 0.848ha (2.01 acres) and is set adjacent to the Lakeview Village Hall and land owned by Swale Borough Council. It is currently unmanaged, open space, dissected by a haul road that was laid to support the construction of the Great East Hall development.
- 2.2 This land was originally identified for a Neighbourhood Equipped Area for Play (NEAP) in the outline planning permission for the Great East Hall housing development (SW/02/1180). The subsequent reserved matters (SW/06/0717) details a NEAP of c.1000sq.m with the balance of land comprising an adjacent area of managed grass with landscaping planting around the boundaries. On delivery, this would revert to the Council's ownership and management, with provision for £52,668 for maintenance costs in a 2007 amendment to the original section 106 agreement (c.£90,000 as at January 2023, taking account of Indexation).
- 2.3 After discussions initiated by a ward Member, who was keen to secure a community shop for Great East Hall, a series of offers have been made by Countryside Properties, the latest in writing received in September 2022. This offer is to transfer the land (as at appendix 1) with a commuted sum of £100,000 *"in lieu of our current obligations, such funding being available to assist in the delivery of a retail unit or deliver play equipment or similar facilities within the wider East Hall Farm site"*. In addition, Countryside Properties has also committed to *"Undertake work to remove the section of haul road within the site and make good"*.
- 2.4 The Council's own estimate of the cost to deliver a NEAP and landscape the site is in the order of £300,000 as at July 2022. This is not reflected in the commuted sum that has been offered, although Countryside may be able to take advantage of some economies of scale to deliver its obligations at a lower cost. There is also the indexed provision for maintenance for which Countryside Properties is also currently liable.

- 2.5 Given the above, there have been several and ongoing attempts to secure an improved offer from Countryside, which has not been forthcoming to date.
- 2.6 The site is part of a wider area subject to overage provisions, detailed in the original sale agreement. This would mean that any uplift in value achieved on the land transferred, through development, will be shared proportionately with the original site owner. Further due diligence is required, but it is our understanding that this existing overage period runs until January 2025. Swale Borough Council would be bound to this should the land transfer proceed, but only until this date.
- 2.7 Draft heads of terms for the transfer have recently been provided by Countryside Properties. These set out the offer as expected but, counter to previous correspondence and recent discussion, it also includes an additional overage provision. Officers would not recommend a transfer on terms that include any overage above those referenced at 2.6.
- 2.8 A transfer of land would be subject to a variation to the section 106, that would need to reflect any agreement reached with Countryside Properties. As the section 106 Agreement is more than 5 years old, this would need to be done through formal application, which can be determined under delegated authority, or called in for determination by Committee.

Delivery of a Community Shop

- 2.9 As referenced, the initiation of the discussion with Countryside Properties regarding the land was focused on the provision of a retail outlet servicing the Great East Hall community. Work has been commissioned to establish the siting and cost estimates of delivering a small retail space, potentially through a modular build.
- 2.10 This proposition reflects a lack of market interest in delivering a new build convenience store in this location, without a through road. Community interest is also a consequence of the failure by developers to bring forward a neighbourhood centre, including retail, as originally identified in the outline consent for the Great East Hall Development. A 2016 appeal decision accepted that a viability assessment demonstrated that the neighbourhood centre, in the manner approved, was not viable and deliverable.
- 2.11 Only a very small proportion (less than 5%) of the site would be required to deliver a community shop but it is likely that the cost will be greater than the commuted sum currently being offered. As such, further fund raising may still be required, to support the up-front capital cost of delivering a shop, and to provide working capital for any future operation.
- 2.12 The community would also need to develop the business model and create a constituted body to take a community shop forward. Some early work to understand potential demand has been undertaken, but further specialist support for community partners is likely to be required and could be resourced through the UK Shared Prosperity Fund. This is likely to take some time to pull together

and will be subject to sufficient support and capacity from community volunteers both at the planning and operational stages.

- 2.13 Depending on the terms under which land is provided to facilitate a community shop, if it did not trade successfully, the asset would likely return to the Council. The building would have the potential to be let for similar or other uses (subject to any change of use permissions required), but this of itself carries some risk. Any repairs, reconfiguration needed and/or vacant periods would present liabilities and have cost implications for the Council.

3 Proposals

- 3.1 If Countryside Properties were to deliver its current obligations under the section 106 agreement the land will be transferred to the Council, landscaped and with a NEAP, which would incur associated costs and liabilities – offset for a period by the contribution towards these that would be payable.
- 3.2 Given the length of time that has passed and with alternative open space provision in the immediate vicinity, the need for the delivery of these obligations could be re-examined. However, the current offer from Countryside Properties would appear to reduce its financial exposure significantly.
- 3.3 The transfer of land to the Council, as unmanaged open space, would still incur additional maintenance and insurance liabilities for the Council, albeit most likely at a reduced level, as compared to a landscaped site with a NEAP.
- 3.4 If not subject to further overage or other restrictive clauses, the transfer could provide a potential future opportunity to utilise the land for community use and/or realise value from some form of future development. This could potentially generate a future income and/or capital receipt for the Council.
- 3.5 It is recommended that Members:-
- Agree in principle for officers to proceed with negotiations for the transfer of the site to Swale Borough Council, with any transfer subject to terms agreed, an application to vary the relevant section 106 agreement and final Committee approval.
 - Subject to the transfer proceeding, agree in principle to identify and reserve an appropriately sized and located parcel of land within the site, to enable the delivery of a community shop. Any transaction would be subject to the receipt and independent review of a funded delivery plan for its construction, a business plan, demonstrating financial sustainability and the formation of an appropriate legal entity through which the project can be progressed.
 - Agree that if the conditions to enter into a transaction to enable the delivery of a community shop are not met by September 2024, a further committee report considers the continued reservation of the land identified for its construction.

4. Alternative Options

- 4.1 Not to proceed with negotiations with Countryside Properties. This is not recommended at this stage, without seeking an improved offer from Countryside Properties. If no acceptable offer is secured and the Council do not proceed, Countryside will then be required to meet its obligations as set out in the section 106.
- 4.2 Not to make any commitment to the Community Shop at this stage. This is not recommended. If transferred to the Council, an 'in principle' agreement to make a parcel of land available within the site will provide a degree of certainty and confidence to the community, in advance of undertaking further substantial feasibility work.

5 Consultation Undertaken or Proposed

- 5.1 The principle and detail of the proposed change to the obligations for Countryside Properties will be subject to consultation through the relevant planning process.
- 5.2 A community workshop attended by the ward Member and a number of residents was held in December 2021, to discuss the possibility of establishing a community shop. During the first half of 2022 a soft market research exercise was undertaken by the community which produced a good response, from nearly 400 people. This indicated a level of interest in using a community shop.

6 Implications

Issue	Implications
Corporate Plan	If transferred, future potential use of the site for community and/or development could deliver against a number of priorities within the Corporate Plan. The opportunity to secure future uses for the site which are financially beneficial to the Council would also contribute to the priority to reduce dependence on government-controlled funding sources.
Financial, Resource and Property	<p>The land at appendix 1 would be transferred to the Council, subject to the outcome of negotiations and an application to vary the relevant section 106 agreement. The required due diligence on the land in question is also required, as set out in the Councils acquisitions policy, with associated costs to be found from existing budgets.</p> <p>Whilst no valuation has yet taken place it is assumed the value of the land will be in excess of officers delegated authority and any final agreement will also be subject to a further committee decision, as required by the acquisitions policy.</p> <p>If heads of terms can be agreed with Countryside Properties and are suitably unfettered, after January 2025 the land could be</p>

	<p>bought forward for other uses which have the potential to generate an income or capital receipt for the Council.</p> <p>Not developing the NEAP and landscaping the site would also mean that the maintenance costs for such would not be incurred in perpetuity, acknowledging that these would be offset for a period by a commuted sum towards maintenance.</p> <p>If transferred as un-landscaped open space there would still be an increased maintenance, management and insurance liability for the Council, whilst the future of the site is determined.</p>
Legal, Statutory and Procurement	The Head of Regeneration, Economic Development and Property will need to complete the necessary negotiation, due diligence and agree draft contracts as applicable and undertake the work required in consultation with the Head of Mid-Kent Legal Partnership. Any future development of the site will be subject to all necessary consents being secured.
Crime and Disorder	Non identified at this stage.
Environment and Climate/Ecological Emergency	None identified at this stage. Any future use of the site would be subject to planning application(s) that will require environmental assessments. The existing unmanaged site, which has now remained relatively undisturbed for some years may also be contributing to local bio-diversity.
Health and Wellbeing	The transfer of land would mean that a planned Neighbourhood Equipped Area for Play (NEAP) would not be delivered. However, there is other provision of open space in the immediate vicinity of this site.
Safeguarding of Children, Young People and Vulnerable Adults	None identified at this stage
Risk Management and Health and Safety	Any transaction is subject to the determination of an application to amend the relevant section 106 agreement. Other risks associated with the proposed transaction will be assessed and considered through the due diligence process and influenced by the outcome of the negotiations. An assessment of risks of accepting the land transfer will be set out in the report required for a future committee to consider the transfer of the land.
Equality and Diversity	Subject to the satisfactory progress of negotiations, a community impact assessment will be undertaken.
Privacy and Data Protection	None identified at this stage.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- **Appendix I** – Site plan of land at Great East Hall

8 Background Papers

- Swale Borough Council Property Asset Strategy 2017-2020

Appendix 1. The site at Great East Hall included within the offer from Countryside Properties

